

FEB 13 2012

Federal Communications Commission  
Office of the Secretary

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	EB Docket No. 07-147
	)	
<b>PENDLETON C. WAUGH, CHARLES M. AUSTIN, and JAY R. BISHOP</b>	)	File No. EB-06-IH-2112
	)	NAL/Acct. No. 200732080025
	)	
<b>PREFERRED COMMUNICATION SYSTEMS, INC.</b>	)	FRN No. 0003769049
	)	
Licensee of Various Site-by-Site Licenses in the Specialized Mobile Radio Service.	)	
	)	
<b>PREFERRED ACQUISITIONS, INC.</b>	)	FRN No. 0003786183
	)	
Licensee of Various Economic Area Licenses in the 800 MHz Specialized Mobile Radio Service	)	

To: The Commission

**ENFORCEMENT BUREAU'S  
OPPOSITION TO PETITION TO INTERVENE AND REVOKE LICENSES**

1. On February 2, 2012, Toshiaki Saito (Petitioner) filed "Petition To Intervene And Revoke Licenses" (Petition). The Chief, Enforcement Bureau (Bureau), by her attorneys, hereby opposes the Petition.

2. By way of background, following designation of this case for hearing but before trial, the Presiding Judge accepted a Settlement Agreement entered into by the Bureau and all but one of the captioned parties and terminated the proceeding.<sup>1</sup> One of the captioned parties, Pendleton Waugh, opposed the settlement and appealed to the

<sup>1</sup> See *Pendleton C. Waugh, et al.*, Order, FCC 09M-51 (ALJ Sippel, rel. Aug. 6, 2009); *Pendleton C. Waugh, et al.*, Memorandum Opinion & Order, FCC 09M-57 (ALJ Sippel, rel. Sept. 25, 2009). Both orders contain copies of the settlement subject to the appeals.

Commission.<sup>2</sup> Following the sudden and unexpected death of Mr. Waugh and at the request of his estate, the Commission agreed to hold the appeal in abeyance for a limited period of time and subsequently entertained filings concerning the effect of Mr. Waugh's death on this case.<sup>3</sup> Mr. Waugh's appeal remains pending.

3. Petitioner represents that he is a creditor of, and was defrauded by, Mr. Waugh. His sole stated purpose for seeking to intervene in this proceeding is "to oppose the Settlement Agreement."<sup>4</sup> Nevertheless, Petitioner makes multiple requests for relief in his single pleading that go significantly beyond merely seeking party status. Specifically, Petitioner requests the Commission to: (1) grant him full party status pursuant to Sections 1.223 of the Commission's rules; (2) invalidate the referenced Settlement Agreement and revoke all licenses held by the captioned licensees; and (3) auction those licenses and, with the proceeds therefrom, repay Petitioner the money he claims to be owed by Mr. Waugh.<sup>5</sup> As shown below, the Petition is procedurally defective and substantively unavailing.

4. Section 1.223(b) of the Commission's rules requires that petitions to intervene must be filed, if at all, within 30 days after publication of the hearing designation order or of a summary thereof in the Federal Register. The Commission designated this case for hearing on July 20, 2007, and published the initiating order in the

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<sup>2</sup> See Appeal from Presiding Officer's Final Ruling, filed Sept. 8, 2009; Appeal from Presiding Officer's Final Ruling, filed Oct. 26, 2009.

<sup>3</sup> See Letter from Joel Kaufman, Associate General Counsel and Chief, Administrative Law Division, Federal Communications Commission, to William Silva, Counsel for Whitney H. Waugh, Sr. (Nov. 10, 2011).

<sup>4</sup> Petition at 1.

<sup>5</sup> See *id.* at 1-2, 20.

Federal Register on August 1, 2007.<sup>6</sup> Accordingly, a request for intervention in this proceeding should have been filed, if at all, under Section 1.223(b), by August 31, 2007.

In the instant case, the Petition was filed more than four years too late.

5. Petitioner fares no better under Section 1.223(c) of the Commission's rules.<sup>7</sup> That section provides that a petition to intervene beyond the 30-day limit must "set forth the interest of the petitioner in the proceeding, show how such petitioner's participation will assist the Commission in the determination of the issues in question . . . must set forth reasons why it was not possible to file a petition within the time proscribed . . . [and that s]uch petition shall be accompanied by the affidavit of a person with knowledge of the facts set forth" therein.<sup>8</sup> Petitioner utterly fails to demonstrate any of these requirements.

6. Beyond claiming status as a creditor of Mr. Waugh, Petitioner does not articulate an interest in the instant hearing proceeding. Over the course of much of his 23-page filing, Petitioner describes various instances of alleged misconduct by Mr. Waugh in personal business dealings and before the Commission in support of his claim that licenses held by the above-captioned parties should be revoked and auctioned off with the proceeds going to pay Mr. Waugh's creditors, Petitioner included. While Petitioner may have an interest in recouping his investments, the Commission is plainly the wrong forum for doing so. The Commission's processes, particularly the intervention

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<sup>6</sup> See *Pendleton C. Waugh, et al.*, Order to Show Cause and Notice of Opportunity for Hearing, FCC 07-125 (July 20, 2007). This Order was published in the Federal Register shortly thereafter. See *Pendleton C. Waugh, Charles M. Austin, and Jay R. Bishop, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc. – Order to Show Cause and Notice of Opportunity for Hearing*, Notice, 72 Fed. Reg. 42088 (2007) ("Notice"); correction published at 72 Fed. Reg. 45049 (2007).

<sup>7</sup> 47 C.F.R. §1.223(c).

<sup>8</sup> *Id.*

provisions encompassed in Section 1.223, were never intended to address satisfaction of a personal debt.

7. Petitioner also offers no legitimate explanation for failing to request intervention within the required 30 day time limit specified by Section 1.223(b). Petitioner claims to have been “unaware of the ongoing proceeding,”<sup>9</sup> but as discussed above, the order setting this case for hearing was duly published in the Federal Register. Thus, even if Petitioner did not have actual notice, he certainly had constructive notice of the commencement of this proceeding. Furthermore, even if Petitioner was unaware in 2007 that the case had been designated for hearing, his own filings demonstrate that he knew the case was pending as far back as 2010.<sup>10</sup> Nevertheless, he provides no explanation as to why he waited for nearly two additional years before seeking to intervene.<sup>11</sup>

8. Also, Petitioner’s Affidavit fails to demonstrate any personal knowledge of the facts set forth in the Petition. At best, Petitioner pays lip service to the “personal knowledge” requirement of the rule by referring repeatedly to excerpts from depositions in which he was not personally involved. While Petitioner may have personal information about his status as a creditor of Mr. Waugh, by itself that information is not an appropriate basis for granting Petitioner party status in this case.<sup>12</sup> To the extent that

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<sup>9</sup> Petition at 2.

<sup>10</sup> See *id.* at 2 (confirming that Petitioner has been filing documents in this proceeding since 2010).

<sup>11</sup> Petitioner claims that he has somehow been “treated as a party” since 2010 on the basis of his previous filings and that his instant Petition is intended to confirm his standing to appear and oppose the Settlement Agreement. Petition at 2. The Bureau submits that Petitioner has never been granted party status in this hearing proceeding and his suggestion that acceptance of various pleadings bestows party status is meritless.

<sup>12</sup> Petitioner also relies in further support of his request for party status on Sections 1.45, 1.939, 1.3, 1.2108 and 1.41 of the Commission’s Rules. This “kitchen sink” approach lacks merit, given that none of the

Petitioner has information that could assist the Commission in resolving the designated issues, the Bureau notes that the only matter pending before the Commission is whether to approve the settlement in this case. To the extent that Petitioner offers any information relevant to whether the Commission should revoke the above-captioned licenses, those issues are not currently pending before the Commission because there has not been a hearing on those issues. In any event, should the Commission decide to consider the information that Petitioner provides, it may certainly do so on an informal basis without bestowing upon Petitioner the party status he now seeks.<sup>13</sup>

9. Based on the foregoing, Petitioner has not demonstrated good cause to accept his late request for intervention. Accordingly it should be summarily dismissed or otherwise denied. The Bureau respectfully requests that the Commission deny the Petition and uphold the Settlement Agreement entered in this case. The Bureau also submits that the public interest will be well-served by upholding the Settlement Agreement, which conserves substantial resources and proffers a \$100,000 voluntary contribution and a compliance plan aimed at deterring any potential violations of the nature designated for hearing in this case.<sup>14</sup>

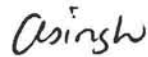
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referenced regulatory provisions is even arguably applicable to, or supports a request for, intervention in an adjudicatory revocation hearing proceeding.

<sup>13</sup> Notwithstanding Petitioner's arguments to the contrary, the Bureau continues to believe that the Settlement Agreement is in the public interest.

<sup>14</sup> See, e.g., Joint Request for Approval of Settlement and Termination of Proceedings, filed Aug. 5, 2009.

Respectfully submitted,  
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February 13, 2012



**CERTIFICATE OF SERVICE**

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 13<sup>th</sup> day of February, 2012, sent by first class United States mail or electronic mail, as noted, copies of the foregoing

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